

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Hay et al.

Serial No.: 10/043,403

Filed: January 10, 2002

For: "Apparatus and Methods for
Selecting Farms to Grow a Crop of
Interest"

Group Art Unit: 3623

Examiner: Meinecke-Diaz

) I hereby certify that this paper is
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) P.O. Box 1450
) Alexandria, VA 22313-1450, on
) this date:

) **February 11, 2005**

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) Registration No. 37,622

) Attorney for Applicants

RESPONSE TO THE REQUIREMENT FOR INFORMATION

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

I. Introduction

In response to the Requirement for Information dated August 17, 2004, applicants hereby submit the attached PTO-1449 form and the references cited therein.

Applicants note that this application is assigned to Renessen, which is a joint venture of Cargill and Monsanto. Upon receiving the Requirement For Information, Renessen conducted an internal investigation for documents that might be responsive to the Requirement. Renessen also forwarded the Requirement to Cargill and Monsanto and asked for their assistance in responding. The documents uncovered in this investigation are identified in the enclosed PTO-1449 form and are submitted herewith.

II. Telephonic Interviews

Before addressing the specific questions raised in the request for information, and to complete the record, applicants hereby provide this summary of the substance of the telephonic interviews that have taken place with the PTO concerning this application. Specifically, after reviewing the Office action mailed January 13, 2004, the undersigned believed that the Office action was not responsive, and that the prior examiner had essentially ignored the arguments made in the response filed October 16, 2003. Accordingly, on March 9, 2004, the undersigned telephoned Group Director John Love to request that a quality control examiner be assigned to review the manner in which the case was handled. In response, Group Director Love indicated that he would review the application either personally or through a quality control examiner.

In a telephonic interview on March 16, 2004, the undersigned spoke with Supervisor Tariq Hafiz by phone. Supervisor Hafiz indicated he had spoken with Group Director Love. He recognized that the rejections of the earlier action had been repeated in the action of January 13, 2004 without addressing our arguments. Accordingly, Supervisor Hafiz indicated that a supplemental Office action would be issued. The Harvey reference from the divisional application was also discussed.

On April 6, 2004 the Office issued a new Office action. Because the new Office action was largely the same as the prior Office action, but included a Response to Arguments section that merely repeated the same arguments from the previous action, the undersigned telephoned Group Director Love on

April 9, 2004, and again requested review by a quality control examiner.

Group Director Love said that he would personally look at the case.

Group Director Love telephoned the undersigned on April 22, 2004. Group Director Love indicated that he had completed his review and that he was withdrawing the last Office action. He also indicated that he was assigning a new examiner to the case and that a new Office action would be issued. Group Director Love indicated that the claims would be subject to a new search. Group Director Love specifically mentioned that claim 18 would be carefully reviewed for compliance with 35 U.S.C. § 101. The undersigned indicated that he was confident that claim 18 met the standard of 35 U.S.C. § 101 as it was drafted to comply with the In re Beauregard format.

Having received no Office action by July 6, 2004 (the three month date of the April 6, 2004 action), the undersigned again telephoned Group Director Love to check the status of the case. Group Director Love indicated that the case had been assigned to Examiner Meinecke-Diaz. Therefore, the undersigned telephoned Examiner Meinecke-Diaz. Examiner Meinecke-Diaz indicated that she had not yet examined the application, but that she expected to issue an Office action soon. She also indicated she would issue an interview summary indicating that the prior Office action was withdrawn to make it clear that the applicant did not have a duty to respond to the prior Office action. True to her word, Examiner Meinecke-Diaz issued the interview summary and subsequently issued the Request for Information.

III. Questions Raised In Request For Information

Applicants will now address the specific questions raised in the Request For Information:

- 1) *The Examiner requests documentation of how the subsidy programs in which the assignee (and/or related companies) have participated are run, including information regarding how a source of subsidies selects who will receive the actual subsidy funds and how much each will be paid. Was this selection process performed manually by an entity and, if so, by whom and how?*

It is believed that the Examiner may erroneously perceive the present invention as being directed to a subsidy program. It is also believed that the Examiner may have a misunderstanding of government subsidy programs.¹ In particular, it is believed that the Examiner may have assumed that the government seeks out or selects entities to receive subsidies. In fact the opposite is true. In particular, government subsidy programs typically work in the following manner.

Government subsidy programs are generally structured to be attractive to numerous individuals and firms. The subsidy program may try to encourage or discourage certain behaviors (e.g. export subsidy programs encourage export of commodities). Each such program predefines the criteria for receiving a subsidy. One or more applicants (e.g., companies or individuals) subsequently apply for the subsidy by attempting to show that they meet the predefined criteria. If the applicant meets the criteria, the government must pay the subsidy. If the applicant does not meet the criteria,

¹ See page 3 stating "The Examiner requests documentation ...regarding how a source of subsidies selects who will receive the actual subsidy funds..."

the government is not permitted to pay the subsidy. In other words, the government is not seeking or selecting specific subsidy recipients. Instead, applicants must seek the subsidy from the government by establishing their qualifications to receive the subsidy, and if the applicants are successful, they receive the subsidy. In other words, the subsidy programs do not prospectively differentiate between specific farmers/applicants, but only define one or more classes of entities who may receive a subsidy should they apply and establish their entitlement to the subsidy (hence the popular term, "entitlements.")

Cargill has participated in government sponsored export subsidy programs. In such programs, government agencies intervene in the commodities export markets in such a manner that the export of certain predetermined commodities is more economically attractive. This creates incentives for the export of commodities, to the benefit of producers and exporters, and makes American commodities more competitive in world markets.

The U.S. government's export subsidy programs vary in scope, administration and size, such that it is not possible to provide one single summary of how they work. However, a list of U.S. government subsidy programs and appropriate links is provided below for the Examiner's consideration. The websites noted below describe currently available U.S. government subsidy programs and how they are administered. Cargill has been involved with many of these programs (or their predecessors) for more than 25 years.

The USDA's food aid home page (<http://www.fas.usda.gov/food-aid.html>) describes the main donation programs. Procurement for many of these programs is handled by FSA - Kansas City (see <http://www.fsa.usda.gov/daco/Announcement/Export/exportannon.htm>). The USDA's export programs home page (<http://www.fas.usda.gov/export.html>) describes the EEP program, the GSM program, etc.

Cargill has been and continues to be an active participant in many of these program (or in their 'predecessor' programs). For example, Cargill participated in PIK (domestic subsidies), BICEP (precursor to EEP), and GSM 5 (first authorized in 1966) which was the precursor of GSM102.

There is also a cotton subsidy program that Cargill Cotton was an active participant in for several years. That participation may have been under the name "Hohenberg."

In addition, Cargill's ethanol business participated in the following three ethanol subsidy programs.

1. Small Producer Tax Credit: This federal tax incentive pays small producers (defined as having annual production < 30 myn gals/yr) 10cents/gal on the first 15 myn gals produced. When Cargill's Eddyville, Iowa ethanol plant came on line in September of 1992, its annual nameplate capacity was <30mgpy, so Cargill qualified for \$1.5myn/yr payout from the US government. This lasted until Cargill's Blair ethanol facility came on line in May of 1995 at which point Cargill was no longer considered a "small producer."
2. Nebraska Ethanol Producer Credit: Cargill qualified for this tax credit when the Blair ethanol facility came on line in May of 1995. This tax

credit equated to 20cents/gal on the first 25mgpy for 5 yrs (total benefit = \$25myn) issued in the form of marketable credits which were sold to fuel distributors to offset their tax liability.

3. CCC (Commodity Credit Corp) credits: This is a federal program wherein the Commodity Credit Corp pays biofuels producers for a portion of their raw material costs on incremental production year on year. In the case of a large facility (>60mgpy), the Federal government would reimburse one unit of feedstock for every 3 purchased. These reimbursements were made on a quarterly basis. Also, the reimbursements were prorated in the event the total incremental production exceeded program funding.

Cargill has also participated in state and local tax benefits (e.g., LB775 in Nebraska).

Cargill has also participated in hedging programs. In these programs, Cargill does not pay the farmer directly, but instead allows the farmer to reduce his/her risk in using Cargill seed to grow a crop by paying an upfront insurance fee. In exchange for this fee and for using Cargill seed, Cargill will guarantee that the farmer will receive at least a predetermined amount of money for growing the crop at harvest. This reduces the farmer's risk. An explanation of Cargill's Risk Management business is available at <http://www.commoditypricerisk.com> and <http://www.commoditypricerisk.com/PRMhome.HTM>.

Renessen has also been involved in grower incentive plans wherein Renessen agrees to purchase a farmer's entire crop for a premium price over prevailing commodity price if the farmer will purchase and plant Renessen specialty crop seed. These grower incentive programs enable farmers to grow

a crop without concern for the harvest time price or for whether he/she will have a buyer when harvest time arrives. These programs are administered in the following manner. Renessen develops a program and then solicits farmers to contract and enroll in the program. Farmers are selected based on where they are located so that grain can be delivered to Renessen's customers in a cost effective manner. Farmers are also selected based on their ability to grow and deliver a high quality crop for Renessen.

Farmers operate in a world of numerous risks at both the micro level, such as weather, pests and crop inputs, and the macro level, such as global crop acreages and yields, and programs like these that reduce their risks are generally attractive to them.

2) Has there ever been an automated or computer-based version of at least part, if not all, of the farm selection process, especially as it is recited in the claimed invention? If so, how does it compare to the functionality of the claimed invention?

Applicants are unaware of any prior art falling within the scope of the claims pending in this application. However, the following automated farming tools are available in the marketplace today.

DuPont Specialty Grains ("DuPont") had and still may have an on-line tool offered under the "OSCAR" mark. DuPont describes this as "a tool to manage electronically, via its secured Website, the allocation of identity preserved (IP) programs and the process of contracting with producers." (See the "Specialty Grains & Soybeans" tab in the binder labeled "Renessen: Contracting in Agriculture" dated September 21, 2001 and, in particular, the

document entitled "DUPONT SPECIALTY GRAINS 2001 CONTRACTING PROGRAMS OSCAR[®] PROCESS/GUIDELINES" dated July 2000 under that tab).

The University of Wisconsin and Purdue University have had programs that assist a farmer in making decisions. (See, e.g. University of Wisconsin Center for Dairy Profitability, <http://cdp.wisc.edu>, and the tools described there). Purdue University has materials available through its website <http://www2.agriculture.purdue.edu> pertaining to farm management. The Examiner is respectfully encouraged to review these websites.

3) Does the Applicant or assignee have a working model(s) of the claimed invention, either in part or in its entirety? If so, what is the name of this working model(s)?

Neither the applicants nor the assignee are in possession of working model(s) of the claimed invention, either in part or in the entirety.

4) Has Applicant or assignee disclosed to the public any aspects of the claimed invention, either in part or its entirety?

This application is available on the USPTO website. Therefore, the present invention has been disclosed to the public. It is believed that there was no disclosure of the invention to the public prior to the critical date.

5) What laws or government-sponsored or industry-sponsored programs throughout the world is Applicant or assignee aware of that make a determination of how and to whom incentives to grow alternate crops are given?

This question appears to reflect the same misunderstanding of subsidy programs discussed above. See the answer to question 1 above.

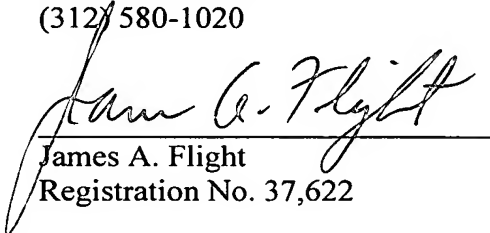
Also, as discussed above in response to question 3, Renessen has provided contracts concerning privately sponsored (as opposed to government-sponsored) "specialty" crop programs. As discussed above, these programs provide farmers an economic incentive to grow a specialty crop by contracting to purchase the farmer's entire crop for a predetermined amount of money. Farmers are willing to forego some profit opportunity (i.e., the possibility that the price at harvest time will be higher than the contract price) in order to guarantee themselves a reasonable profit and eliminate the possibility of loss (i.e., if the price at harvest time is lower than the contract price, or worse, lower than their cost of production.) These grower incentive programs enable farmers to grow a crop without concern for the harvest time price or for whether he/she will have a buyer when harvest time arrives.

If the Examiner has any further questions, or if the Examiner is of the opinion that a telephone conference would expedite the prosecution of this case, the Examiner is invited to contact the undersigned at the number identified below.

Respectfully submitted,

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By:


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February 11, 2005

Form PTO-1449 (Modified)

U.S. Department of Commerce
Patent and Trademark OfficeAtty. Docket No.
20052/36543BSerial No.
10/043,403FOURTH INFORMATION DISCLOSURE
STATEMENT

(Use several sheets if necessary)

Applicant

HAYS et al.

Filing Date

01/10/2002

Group Art Unit

3623

U.S. PATENT DOCUMENTS

*EXAMINER INITIALS		DOCUMENT NUMBER	ISSUE DATE	INVENTOR(S)	CLASS	SUBCLASS	FILING DATE IF APPROPRIATE
	A01						
	A02						
	A03						

FOREIGN PATENT DOCUMENTS

*Examiner Initials		Document Number	Publication Date	Country	Class	Subclass	Translation Yes No	
	B01							

OTHER DOCUMENTS (Including Author, Title, Date, Pertinent Pages, etc.)

C01	High Oil Corn: Market Developments. Available at http://www.vcgrains.org/documents/2001veg_report/High_oil/market_developments.ht , 110 pages (December 9, 2004).
C02	Optimum Quality Grains become DuPont Specialty Grains. SeedQuest. Available at http://www.seedquest.com/News/releases/usa/Dupont/n2748.htm , 2 pages (June 7, 2000).
C03	Center for Dairy Profitability, University of Wisconsin-Madison College of Agriculture and Life Science. Available at http://cdp.wisc.edu , 9 pages (December 9, 2004).
C04	Purdue Agriculture, Purdue University. Available at http://agriculture.purdue.edu , 1 page (December 9, 2004).
C05	Monsanto, FarmFlex®, 2004-2005 FarmFlex Financing Program: Seed Financing, 6 sheets (February 2005).
C06	USDA homepage, Food Aid Programs, http://www.fas.usda.gov/food-aid.html , 5 pages (February 9, 2005).
C07	Portions of Farm Service Agency webpage, including Commodity Operations homepage (2 sheets), Export Operations (6 sheets), Export Announcements (2 sheets), eForms Site Demo (19 sheets) sheets) http://www.fsa.usda.gov/daco/Default.htm (February 9, 2005).
C08	Cargill Risk Management webpage, http://www.commoditypricerisk.com and http://www.commoditypricerisk.com/PRMhome.htm (1 sheet).
C09	Renessen: Contracting in Agriculture. Rennessen, Inc., (September 21, 2001).

EXAMINER

DATE CONSIDERED

*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609; Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.